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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Implementation of Section 309(j) ) PP Docket No. 93-253  
of the Communications Act - )  
Competitive Bidding )  
 )

DOCKET FILE COPY ORIGINAL

To: Chief, Wireless Telecommunications Bureau

**PETITION FOR WAIVER**

National Telecom PCS, Inc. ("NatTel"), pursuant to Section 24.819(a) of the Commission's rules, 47 C.F.R. §24.819(a), hereby requests a limited waiver of the Commission's rules and seeks permission to increase the amount of its upfront payment before the commencement of the C-block auction on December 18, 1995.

**I. STANDING**

NatTel timely filed both an FCC Form 175 short-form application that was deemed acceptable for filing as well as an upfront payment. As such, NatTel is a "qualified bidder" in the C-block auction and clearly has standing to seek the relief requested herein.

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## **II. ARGUMENT**

### **ALLOWING A QUALIFIED BIDDER TO INCREASE ITS UPFRONT PAYMENT BEFORE THE COMMENCEMENT OF THE AUCTION DOES NOT VIOLATE THE COMMISSION'S RULES AND IS CLEARLY IN THE PUBLIC INTEREST**

Section 1.3 of the Commission's rules, 47 C.F.R. §1.3, provides that the Commission may waive its rules upon a showing of good cause. "Good cause" is demonstrated in circumstances when the rules are inconsistent with the public interest.<sup>1</sup> Moreover, the Commission may approve a waiver request when considerations of hardship, equity or more effective implementation of overall policy on an individual basis dictate that a waiver is warranted.<sup>2</sup> As discussed below, good cause certainly exists for granting NatTel's request because NatTel's request is clearly in the public interest.

The primary purpose of the upfront payment requirement is to "deter frivolous or insincere bidding." Second Report and Order at ¶ 171. This is accomplished by requiring bidders to tender a substantial upfront payment "prior to bidding." *Id.* at ¶ 185. "Upfront payments therefore will be required to be made to the Commission by a date certain, which generally will be no later than 14 days before the scheduled auction."<sup>3</sup> *Id.* at ¶ 188. However, the

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<sup>1</sup> See Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>2</sup> See WAIT Radio v. FCC, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); see also 47 C.F.R. §24.819(a) (providing for waiver of the Commission's rules when (a) the underlying purpose of the rule will not be served by its application and grant of the waiver is otherwise in the public interest; or (b) the unique facts of a particular case renders application of the rule inequitable, burdensome or otherwise contrary to the public interest).

<sup>3</sup> The general purpose of the 14-day period is "to allow the Commission adequate time to process upfront payment data and release a Public Notice listing all qualified bidders . . ." Fifth Report and Order at ¶ 71.

Commission has stated that it will “retain the flexibility to **alter the timing** of the upfront payment for specific auctions when appropriate.” (emphasis added) *Id.* at ¶ 185.

NatTel’s limited waiver request does not violate any rule or regulation of the Commission, since NatTel has already submitted a timely upfront payment and merely seeks to **increase** the amount of that payment **before** the commencement of the auction in order to increase its bidding eligibility. Since granting this waiver will not violate any Commission rule or regulation, the Commission should grant the waiver unless it (1) imposes an undue administrative burden on the Commission, (2) is adverse to the public interest, or (3) is inherently unfair to other qualified bidders. Because the waiver requested herein satisfies all of the above conditions, it should be granted.

**A. Granting the Waiver Will Not be Unduly Burdensome**

NatTel requests that it be allowed to increase (but not decrease) the size of its upfront payment by depositing additional funds at the Commission’s lock-box bank (Mellon Bank in Pittsburgh, PA) not later than 11:59 p.m., Thursday, December 14, 1995. This deadline will give the Commission one full business day in which to compute NatTel’s enhanced eligibility based on the size of its additional deposit. This will give the Commission more than ample time to adjust its computerized bidding systems to take into account NatTel’s enhanced bidding eligibility.

Additionally, since NatTel is already a qualified bidder, no additional Public Notice is required to be issued addressing NatTel's enhanced eligibility.

**B. The Waiver is Clearly in the Public Interest**

The public interest would clearly be better served by allowing NatTel to increase its bidding eligibility for the C-block auction. This is true because more bidding eligibility for NatTel means that NatTel will be able to bid for more markets which, in turn, will result in higher overall bids in those markets and, ultimately, more money for the U.S. Treasury. This will result in the attainment of one of the Commission's primary goals, which is to maximize the recovery "of a portion of the value of public spectrum." Second Report and Order at ¶ 3.

Since the Commission has stated that it "will not set a maximum on upfront payments," Fifth Report and Order at ¶ 68; NatTel should be allowed to increase the amount of its upfront payment because to do so is clearly in the public interest.

**C. Granting a General Waiver to all Qualified Bidders Removes any Possible Unfairness**

The only possible objection that could be made to NatTel's waiver request is that granting NatTel a waiver in this fashion might somehow be considered "unfair" to all the other qualified bidders in the C-block auction. Although NatTel does not agree with this line of reasoning, there is a simple

remedy to this possible objection: **allow all qualified bidders to increase their upfront payments by December 14th!**

Allowing all qualified bidders the opportunity to increase (but not decrease) the size of their upfront payments is clearly in the public interest for the same reason that allowing NatTel to do so is in the public interest; since more overall bidding eligibility will result in more active and competitive bidding, higher overall bids, a better auction, and more money to the U.S. Treasury.

**GIVEN THE CONTINUOUS DELAYS IN THE C-BLOCK AUCTION,  
IT IS INHERENTLY FAIR TO GIVE DESIGNATED ENTITIES AN  
ADDITIONAL OPPORTUNITY TO MAXIMIZE THEIR CHANCES  
OF ACQUIRING PCS LICENSES**

The Commission is well aware of the numerous and repeated delays, as well as the "fits and starts," that have plagued the C-block auction since it was first scheduled, and the substantial difficulties that potential C-block bidders have faced in raising sufficient capital caused by these machinations.

In late December 1994, the Commission announced that the short-form filing date for the C-block auction was to be February 28, 1995. In early February, the Commission extended the filing deadline to April 15th or 75 days after the close of the A and B block auction, whichever was later. On March 15th, the TEC stay was entered, delaying the C-Block auction indefinitely. The TEC stay was subsequently lifted and the Commission established a new auction date of August 2nd.

On June 12th, three days before the new short-form filing deadline, Adarand was issued causing the Commission to postpone the auction yet again. Although the Commission later established an August 29th auction date, the Omnipoint stay was issued on July 27th, thereby delaying the auction for a fourth time. After the Omnipoint stay was vacated on September 28th, the Commission set December 11th as the new auction date. But on October 18th, the RadioFone stay was entered, thereby delaying the auction yet again. Although the Supreme Court soon thereafter vacated the RadioFone stay, the shutdown of the Government (and the Commission) for a week in mid-November delayed investors' plans and added to the already high level of uncertainty surrounding the C-block auction. And although the auction is now set to begin December 18th, RadioFone has another stay request pending which, given the history of this auction to date, cannot be dismissed as immaterial.

The result of this litany of delays has been to cause what was at one time a rather large pool of private equity capital earmarked for the C-block auction to dry up. Qualified bidders which have made it this far have had to pull out all the stops. In NatTel's particular case, the confluence of delays, uncertainty and tight timeframes set by the Commission made it impossible for NatTel to deposit the full amount of its intended upfront payment by December 1st, the upfront payment deadline.

Given the history of this auction and the difficulties that virtually all qualified bidders have encountered in raising sufficient capital, in the overall sense of fairness, the Commission should allow the "brave souls" who have made it this far and are qualified bidders one last chance at making the C-block auction something of which the Commission can be proud. The best way to accomplish this is to maximize the amount of money generated by the auction, which means the Commission should allow NatTel (as well as all other qualified bidders) another chance at maximizing their bidding eligibility.

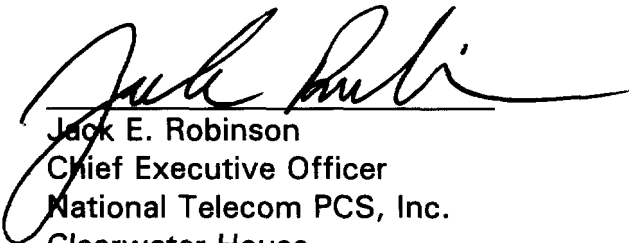
### **III. RELIEF REQUESTED**

NatTel respectfully requests that the Commission grant a waiver to NatTel and allow it to increase (but not decrease) the amount of its upfront payment not later than 11:59 p.m., Thursday, December 14, 1995. In the alternative, NatTel respectfully requests that the Commission, on its own motion through the Chief of the Wireless Telecommunications Bureau pursuant to delegated authority, grant all qualified bidders a general waiver and allow them to increase (but not decrease) the amount of their upfront payments no later than Thursday, December 14, 1995. Such a general waiver can be granted in the Public Notice that announces all of the qualified bidders for the C-block auction, thereby eliminating any potential additional administrative burden on the Commission staff.

Dated: December 4, 1995

Respectfully submitted,

**NATIONAL TELECOM PCS, INC.**

  
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**CERTIFICATE OF SERVICE**

I, Jack E. Robinson, hereby certify that on this 4th day of December, 1995, a copy of the foregoing was served by hand on the following parties:

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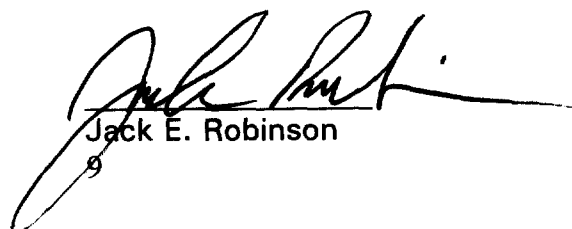
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